

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AIRCRAFT ENGINE LEASE FINANCE,
INC.

Plaintiff,

v.

PLUS ULTRA LÍNEAS AÉREAS, S.A.,

Defendant.

Case No.

COMPLAINT

AIRCRAFT ENGINE LEASE FINANCE, INC. (“AELF”), by its undersigned attorneys,
allege as follows:

INTRODUCTION

This is an action for breach of contract. In the summer of 2019, Plaintiff, Aircraft Engine Lease Finance, Inc. (“AELF”) leased two CFM International CFM56-5C4 aircraft engines to Plus Ultra Líneas Aéreas, S.A. (“Plus Ultra”), a Spanish airline primarily engaged in transporting passengers, pursuant to two engine lease agreements. Thereafter, on or about March 15, 2020, the parties executed an Omnibus Engine Lease Amendment [ESN 741481 & 741647] (the “Omnibus”), which amended the lease agreements in order to take into account the impact of the pandemic commonly known as “Covid-19” on the aviation industry and on Plus Ultra.

Specifically, the Omnibus provided Plus Ultra with reduced rent obligations for the period beginning March 15, 2020 and ending on May 31, 2020. Thereafter, from June 1, 2020 through May 31, 2021, rent obligations were to be billed per Flight Hour, i.e., an hourly rental amount,

with a minimum monthly payment for 100 Flight Hours per engine. The Omnibus did not, however, relieve Plus Ultra of its obligations to pay rent.

Indeed, the engine leases provide that failure to make a payment of rent within twenty (20) days of its due date constitutes an “Event of Default”. On February 9, 2021, AELF notified Plus Ultra of its intent to enforce the leases and demanded payment thereunder by no later than noon Central on January 25, 2021. Plus Ultra’s obligation to pay rent under the leases is “direct, general, and unconditional,” and is not affected by any reduction in Plus Ultra’s business.

THE PARTIES

1. AELF is a corporation organized under the laws of Territory of Puerto Rico, with its principal place of business at City View Plaza II, 48 Road 165, Suite 1120, Guaynabo, Puerto Rico. The sole shareholder of AELF is Victoria Ricks, a United States citizen.

2. Plus Ultra is a Spanish limited liability company, with its principal place of business at Torregalindo 1, la planta, 28016 Madrid, Spain.

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2).
4. Venue is proper in this district under 28 U.S.C. §1391(b)(3).
5. The amount in controversy exceeds \$75,000, exclusive of costs and interest.
6. There is complete diversity between the parties.
7. Plus Ultra has consented to the jurisdiction of this court.

THE FACTS

I. The Leases.

8. AELF is the owner of one CFM International CFM56-5C4 aircraft engine bearing manufacturer’s serial number 741481 (“ESN 741481”). AELF and Plus Ultra signed an aircraft

lease agreement with respect to ESN 741481 on or about June 20, 2019 (the “741481 Lease”). A true and correct copy of the 741481 Lease is attached hereto as **Exhibit A**.

9. AELF is also the owner of one CFM International CFM56-5C4 aircraft engine bearing manufacturer’s serial number 741647 (“ESN 741647”). AELF and Plus Ultra signed an aircraft lease agreement with respect to ESN 741647 on or about July 11, 2019 (the “741647 Lease”). A true and correct copy of the 741647 Lease is attached hereto as **Exhibit C**.

10. Both the 741481 Lease and 741647 Lease were subsequently amended by an Omnibus Engine Amendment dated as of March 15, 2020 (the “Omnibus”). A true and correct copy of the Omnibus is attached hereto as **Exhibit C**.

11. Collectively, the 741481 Lease and the 741647 Lease, as each are amended by the Omnibus, shall be referred to as the “Leases”.

II. Consent to Jurisdiction and Venue; Applicable Law.

12. Each of the Leases provide that such Lease is governed by the laws of the State of New York. (Exhibits A and B, §§25.3(a)).

13. Further, each of the Leases provide that Plus Ultra irrevocably consents to any action against it being brought in “the courts of the State of New York, United States America” and that it “irrevocably submits to the jurisdiction of the New York courts. (Exhibit A and B, §§25.3(a)).

III. Rent Obligations, Events of Default, Default Remedies.

14. The Leases provide, *inter alia*, that:

a. AELF is leasing each of ESN 741481 and ESN 741647 (each, an “Engine” and collectively, the “Engines”) to Plus Ultra. (Exhibit A and B, §2.1).

b. The “Term” for each Engine commences on the “Delivery Date,” (i.e., the date on which Plus Ultra executed a certificate of acceptance with respect to each engine) and ends on the “Expiry Date.” (Exhibit C, §3.1(a)).

c. The “Expiry Date” is defined as the earlier of:

- i. “[the date] the Engine is rendered unserviceable and Lessor does not make a Spare Engine (as defined [in the Omnibus]) immediately available to the Lessee or a Replacement Engine (as defined [in the Omnibus]) available to Lessee within fifteen (15) days pursuant to Section 3.1(b) [of the Omnibus];” or
- ii. “the date upon which the Lessee permanently phases the Airbus A340-300 out of its fleet and the Lessee has operated a combined total of 8,000 Flight Hours, for both Engines, since 1 June 2020.” (Exhibits A and B, §3.1(a)).

d. Prior to the execution of each Lease, Plus Ultra deposited a “Security Deposit” with AELF equal to \$65,000 per engine, for a total of \$130,000, which Security Deposit “may be liquidated and applied by [AELF] upon the occurrence of a Default or Event of Default” under the Leases. (Exhibits A and B, §§5.2, Sch. A).

e. During the Term, Plus Ultra is obligated to pay “Rent,” “PBH Rent” or “Reduced Rent” for each Engine:

- i. “Rent” equal to \$65,000 per month is to be paid in advance on each “Rent Payment Date” began on the “Rent Commencement Date” (i.e., the Delivery Date and the same date of the month each month thereafter during the Term) (Exhibits A and B, §§1.35; Exhibit C, §4.1;).

ii. “PBH Rent” equal to \$220 per Flight Hour¹ flown by an Engine, during each applicable month (Exhibit C, §4.1, Sch. 1).

iii. “Reduced Rent” equal to either \$30,000 per month or \$15,000 per month. (Exhibit C, §4.1).

f. The amount of Plus Ultra’s obligations for Fixed Rent, PBH Rent, or Reduced Rent varies over the course of four time periods defined in the Leases:

- i. the period beginning on the Delivery Date with respect to each Engine through March 15, 2020 (the “First Period”), where Rent or Reduced Rent is due;
- ii. the period beginning on March 15, 2020 and expiring on May 31, 2020 (the “Second Period”), where Reduced Rent or PBH Rent is due;
- iii. the period beginning June 1, 2020 and ending on May 31, 2021 (the “Third Period”), where PBH Rent is due; and
- iv. the period beginning on June 1, 2021 and ending on the Expiry Date with respect to each Engine (the “Fourth Period”), where PBH Rent is due.

(Exhibit B, §4.2).

g. During the Third Period, Plus Ultra is required to pay PBH Rent for a minimum of 100 Flight Hours per month. Consequently, PBH Rent equals \$22,000 per month. (Exhibit C, §4.2).

h. Plus Ultra’s obligations under the “Lease are direct, general and unconditional obligations of the Lessee . . .” (Exhibits A and B, §13.1(i)).

¹ A “Flight Hour” represents one hour of flight.

i. The “Agreed Value” of each Engine is \$3,000,000. (Exhibits A and B, Sch. A, “Agreed Value”).

j. An “Event of Default” occurs when:

i. Plus Ultra fails “to make a payment of Rent, or other payment due Lessor in the manner and within twenty (20) days of its due date provided [in the Lease] (no notice required);” (Exhibits A and B, §§21.1(a)); or

ii. Plus Ultra defaults “beyond any applicable cure period under any other lease between Lessor (or its affiliates) and Lessee (or any of its affiliates)” (*id.*, §§21.1(h)).

k. Upon the occurrence of an “Event of Default,” AELF may

by written notice to Lessee specifying a payment date not earlier than ten (10) Business Days from the date of such notice (the ‘Default Payment Date’), may demand that Lessee pay to Lessor, and Lessee will pay to Lessor, on the Default Payment Date, as liquidated damages for loss of a bargain and not as a penalty (in lieu of Rent for the Engine thereof due for the periods commencing after the date specified for payment in such notice), any unpaid Rent, and other amounts payable by Lessee to Lessor hereunder, due for periods prior to and including the period ending with the Rent Payment Date immediately preceding the Default Payment Date, plus an amount equal to the Agreed Value of the Engine . . .

(Exhibits A and B, §§21.2(b)).

l. All notices must “be given in writing” and may “be given by electronic mail so long as the sending party receives electronic confirmation of receipt from the intended recipient.” (Exhibits A and B, §§22).

m. “In the Event the Lessor shall bring any suit to enforce any of its rights [thereunder] and shall be entitled to judgment, then in such suit Lessor may recover reasonable

expenses and attorney's fees, and the amount thereof shall be included in such judgment." (Exhibits A and B, §§21.2(c)).

- n. Additionally, "[i]f any legal action or other proceeding is brought in connection with or arises out of any provision of [each] Lease, the prevailing party will be awarded reasonable attorneys' fees and other costs incurred in the preparation, prosecution and appeal of such action or proceedings." (Exhibits A and B, §§25.4(a)).

IV. Events of Default for Failure to Pay Rent and Cross Default.

15. Beginning on October 5, 2020, by failing to pay PBH Rent when due, an "Event of Default" under the terms of the 741781 Lease occurred and is continuing, as follows:

Date	Invoice No.	Description	Amount	Account Balance
10/05/20	BR741481-017	PBH (09/01/20 – 09/30/20)	22,000.00	22,000.00
11/05/20	BR741481-018	PBH (10/01/20 – 10/31/20)	22,000.00	44,000.00
12/05/20	BR741481-019	PBH (11/01/20 – 11/30/20)	22,000.00	66,000.00
01/05/20	BR741481-020	PBH (12/01/20 – 12/31/20)	22,000.00	88,000.00
02/05/21	BR741481-021	PBH (01/01/20 – 01/31/21)	22,000.00	110,000.00
		Accrued Interest	4,228.17	114,228.17

True and correct copies of the invoices sent by the AELF to Plus Ultra for the amounts set forth herein are attached hereto as **Exhibit D**.

16. Beginning on October 5, 2020, by failing to pay PBH Rent when due, an "Event of Default" under the terms of the 741647 Lease occurred and is continuing, as follows:

Date	Invoice No.	Description	Amount	Account Balance
10/05/20	BR741647-019	PBH (09/01/20 – 09/30/20)	22,000.00	22,000.00
11/05/20	BR741647-020	PBH (10/01/20 – 10/31/20)	22,000.00	44,000.00
12/05/20	BR741647-021	PBH (11/01/20 – 11/30/20)	22,000.00	66,000.00
01/05/20	BR741647-022	PBH (12/01/20 – 12/31/20)	22,000.00	88,000.00
02/05/21	BR741647-023	PBH (01/01/20 – 01/31/21)	22,000.00	110,000.00
		Accrued Interest	4,228.17	114,228.17

True and correct copies of the invoices sent by the AELF to Plus Ultra for the amounts set forth herein are attached hereto as **Exhibit E**.

17. Additionally, an Event of Default under any one of the Leases constitutes an Event of Default under all of the Leases. (Exhibits A and B, §§21.1(h)).

V. AELF's Demand for Payment on the Default Payment Date.

18. On or about February 9, 2021, AELF issued a notice of Default Payment Date with respect to both of the Leases. A true and correct copy of the notice is attached hereto as **Exhibit F**.

19. AELF received an electronic confirmation from Roberto Roselli, the Lessee's notice party pursuant to Section 22 of the Leases, confirming Mr. Roselli's receipt of AELF's February 9, 2021 correspondence. A true and correct copy of the electronic confirmation is attached hereto as **Exhibit G**.

20. Pursuant to AELF's February 9, 2021 notice, a payment in the amount of \$6,228,456.33 was due on February 25, 2021. (Exhibit F).

21. No payment was received from Plus Ultra on February 25, 2021.

22. Plus Ultra's failure to pay all Rent and other monies due and owing prior to the Default Payment Date, in addition to the Agreed Value of each Engine, is a breach of the Leases.

23. Additionally, any Event of Default under any one of the Leases constitutes a Lessee Event of Default under all of the Leases. (Exhibits A and B, §19.1(h)).

24. Because an Event of Default has occurred and is continuing under both Leases, AELF will apply the Security Deposits paid by Plus Ultra against its payment obligations.

COUNT ONE
(Breach of Contract – ESN 741481)

25. AELF repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

26. The 741481 Lease is a binding contract by and between AELF and Plus Ultra.

27. Plus Ultra failed to perform its obligations under 741481 Lease by, among other things, failing to make Rent when due under the 741481 Lease.

28. Plus Ultra has failed to cure its defaults and/or pay the sums due and owing to AELF by the Default Payment Date.

29. Under the terms of the 741481 Lease, AELF is entitled to contractual money damages from Plus Ultra as provided therein, (a) for the arrearages in payments due thereunder, in an amount to be determined at trial, but in no event less than \$114,228.17; (b) the Agreed Value of ESN 741481, \$3,000,000; (c) attorneys' fees and costs, as allowed by Sections 21.2(c) and 25.4 of the 741481 Lease; less (d) the \$65,000 Security Deposit previously paid by Plus Ultra.

COUNT ONE
(Breach of Contract – ESN 741647)

30. AELF repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

31. The 741647 Lease is a binding contract by and between AELF and Plus Ultra.

32. Plus Ultra failed to perform its obligations under the 741647 Lease by, among other things, failing to make Rent when due under the 741647 Lease.

33. Plus Ultra has failed to cure its defaults and/or pay the sums due and owing to AELF by the Default Payment Date.

34. Under the terms of the 741647 Lease, AELF is entitled to contractual money damages from Plus Ultra as provided therein, (a) for the arrearages in payments due thereunder, in an amount to be determined at trial, but in no event less than \$114,228.17; (b) the Agreed Value of ESN 741647, \$3,000,000; (c) attorneys' fees and costs, as allowed by Sections 21.2(c) and 25.4 of the 741647 Lease; less (d) the Security Deposit previously paid by Plus Ultra.

Dated: March 1, 2021

Respectfully submitted,

AIRCRAFT ENGINE LEASE FINANCE, INC.

By: /s/ Oren Giskan

One of Its Attorneys

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Index of Exhibits to the Complaint

Exhibit	Description
A.	Engine Lease Agreement [MSN 741481] dated June 20, 2019
B.	Engine Lease Agreement [MSN 741647] dated July 11, 2019
C.	Omnibus Lease Amendment [ESNs 741481 & 741647] dated as of March 15, 2020
D.	ESN 741481 Invoice Nos. <ul style="list-style-type: none"> - BR741481-017 - BR741481-018 - BR741481-019 - BR741481-020 - BR741481-021
E.	ESN 741647 Invoice Nos. <ul style="list-style-type: none"> - BR741647-019 - BR741647-020 - BR741647-021 - BR741647-022 - BR741647-023
F.	February 9, 2021 Notice of Default Payment Date
G.	February 9, 2021 electronic confirmation from R. Roselli